



California Fair Political Practices Commission

August 14, 1987

Juan Chacon
23 Zephyr Cove Cir.
Sacramento, CA 95831

Re: Your Request for Advice
Our Advice No. A-87-197

Dear Mr. Chacon:

You have requested our advice regarding any prohibition or restrictions mandated by the "revolving door" provisions of the Political Reform Act (the "Act")^{1/} which would apply to your accepting the position as executive director of the Hemophilia Council of California.

QUESTION

Are you prohibited from representing the Hemophilia Council of California in any proceedings involving the Department of Health Services or the Office of AIDS in light of the Act's restrictions on activities of former state officers and employees?

CONCLUSION

You are prohibited from representing the Hemophilia Council of California in any proceeding in which the State of California is a party if, as a state employee, you participated in the proceeding. However, because you have not been involved in implementation of the state contract with the Hemophilia Council of California for the 1987-88 fiscal year, you are not prohibited by the Act from representing the Hemophilia Council regarding that matter.

FACTS

You are currently employed as the Health Program Manager II with the California Department of Health Services' Office of AIDS. Part of your responsibility is to supervise the Education and Prevention Unit which selects, funds and monitors AIDS prevention and education projects throughout the state.

The Hemophilia Council of California (the Council) is one of the local education projects selected for funding through the Education and Prevention Unit for fiscal year 1987-88, in the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

amount of \$233,645. You are now being considered by the Council for the position of executive director, which you understand will be financed in part by the funds from the Office of AIDS.

ANALYSIS

The Act prohibits former state employees from representing private clients in matters in which they participated while on the public payroll. Sections 87401 and 87402 provide:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

Section 87401.

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

Section 87402.

Your employment as Health Program Manager II with the Department of Health Services makes you a state administrative official who is subject to the provisions of Sections 87401 and 87402. (Section 87400(b).) Therefore, if you leave state employment, you would be prohibited from representing, aiding, counseling, consulting for or assisting in representing any person,^{2/} for compensation, in connection with any proceeding

^{2/} "Person" is defined in Section 82047 as: "an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert."

involving the Council and the State, in which you participated as a state employee.

Participation

Section 87400(d) defines "participated" as follows:

(d) "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.

The duty statement which you supplied to us identified the tasks required of the Health Program Manager II with the Office of AIDS. According to this document 25% of your responsibilities have to do with supervising review, selection, funding and monitoring of contracts.^{3/} Although other employees may have had more direct contact with the Council during review and award of the contract to the Council for 1987-88, the fact that you had a supervisory position directly responsible for these activities means that you "participated" for purposes of the

^{3/} The applicable provisions of the Office of AIDS Duty Statement for Health Program Manager II are:

10% Direct and supervise the activities of the Health Educator staff within the Education and Prevention Unit to select, fund, monitor, and enhance AIDS prevention education projects that will impact the spread of the AIDS virus...

* * *

10% Direct and supervise the activities of the ... staff ... whose functions include: contract management and administration; contract processing....

* * *

5% Plan, direct, and evaluate staff activities in the monitoring of approximately eighty-five State-funded contracts totaling over \$10 million. Coordinate Department staff recommendations with those of the AIDS Advisory Committee and advise the Director on funding decisions for new and continuing local AIDS projects....

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Act in the award of that contract. (See, Sanford Advice Letter, No. A-85-182; and Berrigan Advice Letter, No. A-86-045, copies enclosed.)

Proceeding

Section 87400(c) provides, in pertinent part, that a "proceeding" is:

...any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or administrative agency....

(Emphasis added.)

When the limitations on activities of the Act apply to a former state administrative official, that official's participation in a proceeding in which he or she participated as a state employee is restricted throughout the duration of the proceeding. (See, Sanford Advice Letter, supra, at page 3.) However, participation is limited only as to proceedings in which the former employee participated.

You will note that Section 87400(c) includes in its definition of "proceeding" both applications and contracts. The contract application and award process, and the contract monitoring process are separate proceedings pursuant to Section 87400(c). (See, Sanford Advice Letter, supra, at page 3.) If you participated in the contract application and award proceeding involving the Council's 1987-88 fiscal year contract, you may not represent the Council in connection with that proceeding if you become the Council's executive director. Similarly, if you have participated in monitoring the Council's performance under the 1987-88 fiscal year contract, you may not represent the Council in that proceeding if you become the Council's executive director.

Your duty statement indicates that as program manager your responsibilities include supervising both the application process and contract monitoring. Your letter indicates that you participated in the contract application and award proceeding involving the 1987-88 fiscal year contract with the Council. However, you have informed us that you have been on leave of absence since just after the 1987-88 fiscal year contract between the state and the Council went into effect, and that the oversight activities have not yet begun. Therefore, you have not been personally involved with oversight

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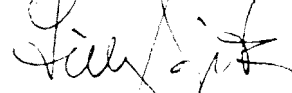
or implementation of the contract.^{4/} Based on these facts, and previous Commission advice, Sections 87401 and 87402 do not affect your ability to represent the Council in any proceedings involving implementation or monitoring of the contract for fiscal year 1987-88.

Although this advice is consistent with past letters of the Commission, we anticipate that the Commission will re-examine this issue soon, and clarify the provisions of Section 87400, et seq., either through opinion, regulation or both. If you should find yourself in a similar position in the future, contact us again to determine the Commission's position on the issue.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

LS:km
Enclosures

^{4/} Based on our telephone conversation of July 29th, you have been on leave of absence since July 6, 1987. The negotiations on the contract concluded at the end of June, and oversight of the contract will not begin before September or October 1987. Be advised that should you return to the Office of AIDS and resume your duties as program manager, without documentation to the contrary, we would assume that you will be participating in development of the oversight procedures for the contract effective during fiscal year 1987-88. In that case, the advice in this letter would have to be reviewed.

July 15, 1987

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Dianne Griffiths, General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804

Dear Ms. Griffiths:

The purpose of this letter is to request your advice on the applicaiton of Government Code Section 87400, et seq, to my prospective employment as Executive Director with the Hemophilia Council of California, thereafter Council.

I am currently employed as a Health Program Manager II (HPM II), with the Office of AIDS within the Department of Health Services. I have served in this capacity since December, 1986. Part of my responsibility as supervisor of three distinct units, is to supervise the Education and Prevention Unit which selects, funds, and monitors AIDS prevention and education projects targeting various high risk groups throughout the State. From July, 1986 to December, 1986, I was Chief of the Support Services Unit.

For your convenience, I have attached a copy of my current job description and an organization chart (Attachment 1). Please note the highlighted portion on page 2 of the attached duty statement for the HPM II, which indicates the 10% time supervisory relationship of the Education and Prevention Unit.

The Council is one of the local education projects selected and funded through the Education and Prevention Unit for Fiscal Year 1987/88. The procedure for selecting the Council was via the Request for Proposal (RFP) process. Briefly, the Council prepared a response to an RFP in which it detailed the scope of work to be performed and a budget request. This response was reviewed by the Education and Prevention Unit with some non-state reviewers participating, and a funding recommendation was made by the Chief of this unit. Negotiations were conducted by appropriate education staff of the unit with the Education Unit Chief directly supervising and approving the final scope of work and budget of the Council. The RFP process began in January, 1986 resulting in an award of \$233,645 to the Council for Fiscal Year 1987/88. The position of Executive Director is projected to be funded at the 50% level utilizing such funds awarded.

Dianne Griffiths, General Counsel
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The issue to be resolved is whether, given the above circumstances, I am prohibited from accepting the Executive Director position of the Council, and representing their interests in any regard before the Department of Health Services and the Office of AIDS.

If further information of clarification of information is necessary, I can be reached at (916) 429-1429.

Thank you for your prompt attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Juan Chacón".

Juan Chacón
23 Zephyr Cove Circle
Sacramento, CA 95831

OFFICE OF AIDS
Duty Statement

Health Program Manager II
Education and Support Services Section
Position Number: xxxx-xxx-xxxx-xxxx

- I. Under general direction of the Chief, Office of AIDS, the Health Program Manager II (HPM II) plans, organizes, directs and supervises the work of the multi-disciplinary technical, administrative and support staff of the Office of AIDS; and guides staff in the development of program policy, priorities, and long term strategies in the control of AIDS.

DUTIES

Percent

- 15% Evaluate subject-matter issues and develop policies for the AIDS program; interpret policy to subordinate staff; interpret policy to local health program administrators; analyze ongoing and new programs and keep Unit Chiefs and Division Chief informed of current activities, achievements, and operating problems. Review and approve staff recommendations and proposed solutions to problems.
- 10% Represent the Chief, Office of AIDS and higher level Department officials at meetings and conferences and in relationships with other agencies, both governmental and private. Negotiate sensitive and complex issues with public constituents such as representatives of high-risk or high-visibility populations. Act as Department liaison to both the eighteen-member California Task Force on AIDS and the nine-member legislatively mandated AIDS Advisory Committee; function as Executive Secretary to and direct staff for task force/committee chairpersons; plan agendas for and facilitate all task force/committee meetings.
- 7% Negotiate with Department service and support units on matters of personnel, training, fiscal and budgeting administration, public information, statistical and data processing services. Has primary responsibility for development, coordination and execution of the annual AIDS budget in conjunction with AIDS program Unit Chiefs and the Budget Office. Review and coordinate staff work in preparation, administration, evaluation and control of local AIDS programs and plans.

Health Program Manager II

- 5% Participate in the recruitment, selection, placement and training of program staff. Determine training needs and recommend specialized and other staff development. Formulate and enforce program policy with respect to affirmative action and upward mobility.
- 10% Direct and supervise the activities of the Health Educator staff within the Education and Prevention Unit to select, fund, monitor, and enhance AIDS prevention education projects that will impact the spread of the AIDS virus. The current 42 projects total over \$5 million and focus on education and counseling needs of various high risk populations, i.e., ethnic minorities, intravenous drug users, incarcerated individuals, and hemophiliacs.
- 10% Direct and supervise the activities of the nursing and analytical staff within the Pilot Care Project Unit in conducting special projects totalling over \$4.5 million to develop standards for treatment of AIDS-related diseases, i.e. 1) pilot projects to demonstrate the value of noninstitutional health care services, such as hospice, home health, and attendant care in controlling costs and providing humane care to those with AIDS; 2) pilot programs to reduce the spread of AIDS through residential detoxification and treatment services for intravenous drug users; 3) a cost of care study for AIDS patients in skilled nursing facilities; 4) a statewide minority treatment and counseling program; and 5) a cost of care study of AIDS patient care from diagnosis to death.
- 10% Direct and supervise the activities of the administrative, analytical, and clerical staff within the Support Services Unit whose functions include: contract management and administration; contract processing; budget and fiscal management; personnel management and transactions; staff training; clerical support; and general administration.
- 13% Prepare, edit and submit funding applications to federal or other agencies for the development or expansion of AIDS activities in relation to home health, attendant or hospice care, skilled nursing facilities, IV drug abuse, AIDS treatment and counseling, and information/prevention education directed toward high-risk populations, health care providers and the general public.

Health Program Manager II

- 5% Plan, direct, and evaluate staff activities in the monitoring of approximately eighty-five State-funded contracts totalling over \$10 million. Coordinate Department staff recommendations with those of the AIDS Advisory Committee and advise the Director on funding decisions for new and continuing local AIDS projects; negotiate project objectives and amounts with local county health departments and private non-profit organizations and approve payment of invoices for provided services. Prepare and edit reports, issue memorandas, position papers, press releases, and articles for publication.
- 13% Analyze new laws, proposed legislation and proposed regulations relating to AIDS program matters and advise on policy implications. Interpret program and provide technical assistance to legislators, the Legislative Analyst's Office, Department of Finance and higher level Department staff. Prepare fiscal impact statements on proposed legislation; testify for the Department before legislative committees on issues concerning the AIDS Program.
- 2% Perform other duties as necessary or directed.

Personal Contacts

- A. Department and federal staff at all levels.
- B. Local medical providers and County Health Department Directors.
- C. State legislative staff.
- D. Community based organizations.
- E. General Public.

Supervision Exercised

Supervision of 32 full time professional and clerical staff engaged in the activities described. Activities include recruitment, training, and evaluation of staff.

Consequences of Actions

The decisions and actions of this position have significant impact on the compliance with legislative mandates for the prevention and control of AIDS in California.

Health Program Manager II

Specifically:

- A. Failure to award and monitor contracts in a timely manner delays needed services on the local level to combat a significant public health problem.
- B. Failure to provide supervision and training to staff results in vital program tasks (monitoring and technical assistance; invoice payment, etc.) not being performed in an adequate or timely manner.



California Fair Political Practices Commission

July 16, 1987

Juan Chacon
23 Zephyr Cove Circle
Sacramento, CA 95831

Re: 87-197

Dear Mr. Chacon:

Your letter requesting advice under the Political Reform Act was received on July 15, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

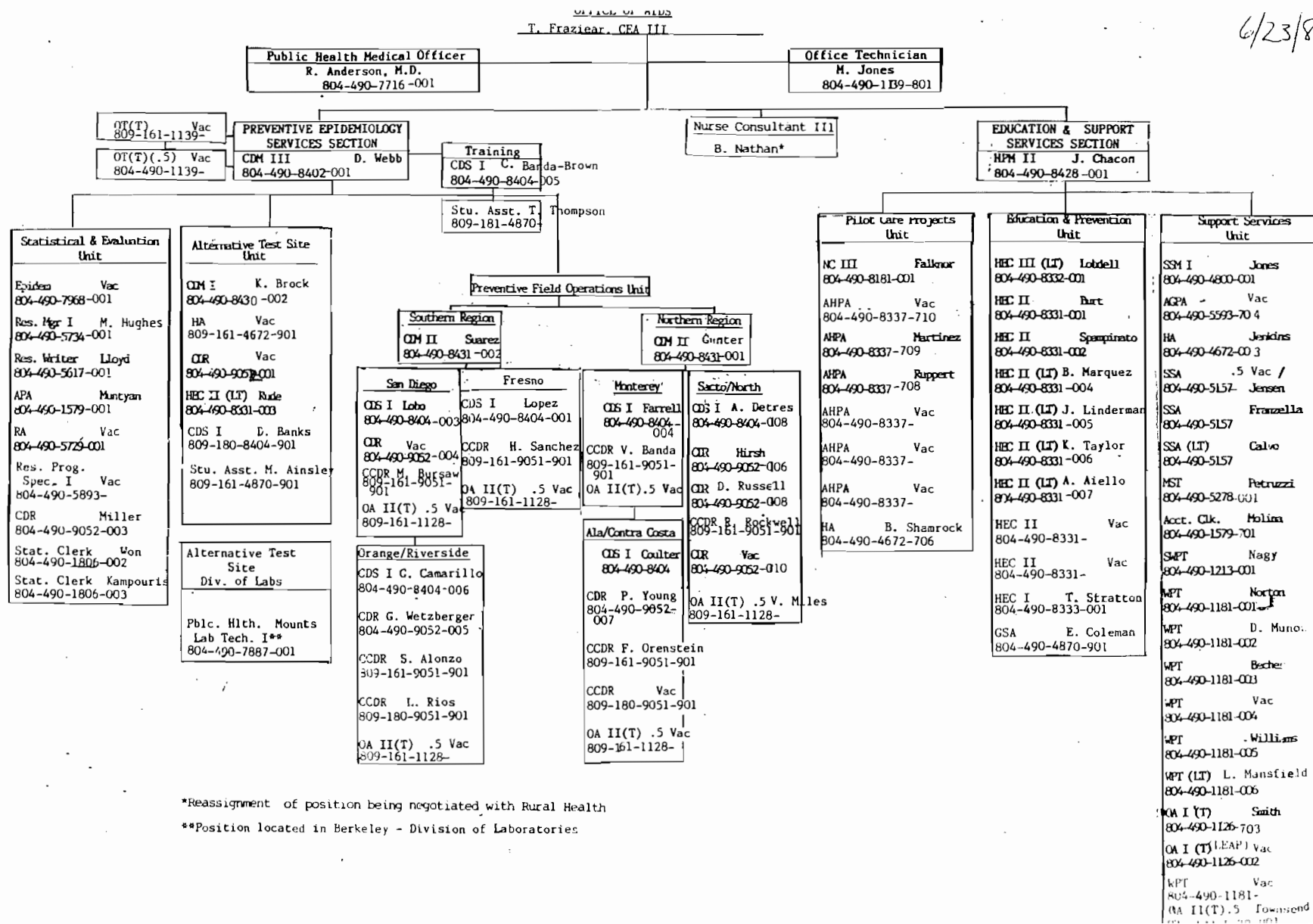
You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:jaj

6/23/8



*Reassignment of position being negotiated with Rural Health

**Position located in Berkeley - Division of Laboratories